human guidance in the institutions of society culminating in the modern state; religious jurisprudence on the other hand posits the ipse dixit of religion or the church as its rule and measure. God is the law giver; no laws of his can be repealed; they are eternal. The judge is simply the mouthpiece of God.

The essay proceeds throughout along this line. The author has a fine grasp of his subject and reasons very clearly. An interesting and rather startling statement is his claim that the ancient Jewish state was not a theocracy. The proof for this statement (page 40) is not convincing. With this exception his points are well taken and his argument well defended. He proves effectually his thesis that so called religious or theological jurisprudence is entitled to be termed law. He establishes by cogent argumentation his claim that law from the social standpoint is an integral element of the monotheistic belief; God is the source of right; hence all crime and wrongdoing are subversive of the will of God. This is the absolute religious standpoint as over against the human and relative as elucidated in modern theories. It is only another expression of the age old conflict between idealism and realism. Dr. Rapaport's essay is a thoughtful contribution to the elucidation of this conflict as it affects the subject in hand.

DAVID PHILIPSON.

Jahrbuch des oeffentlichen Rechts. Band VII, 1913. (Tübingen: Verlag von J. C. B. Mohr (Paul Siebeck), 1913. Pp. 507.)

As usual, the *Jahrbuch* for 1913 is divided into two parts, the first containing a number of essays on various questions in the general field of public law, the second devoted to reports of recent legislation and other developments in the public law of the German Empire, the several German states and foreign countries. This second part of the volume contains a large amount of interesting and valuable material for the student of comparative constitutional law and comparative legislation. The constitutions of the Portuguese and Chinese republics are given in German translations. By far the larger portion of the *Jahrbuch* is given over to these reports; only 121 pages being occupied with the *Abhandlungen.*

The first article in Part I, by Dr. Karl Kormann, privatdocent in the University of Berlin, is on "The Relations between Justice and Administration." The writer is not content merely to define the boundary line between these two spheres of state action but discusses their relations one to the other under several categories. His discussion defends the

thesis that both justice and administration are in fact purely formal concepts; that in effect justice is what the civil and criminal courts do, administration what the administrative officials do, without reference in either case to the content of their acts. The various criteria which have been proposed for determining by some material principle the field of each and the dividing line between the two fields are discussed and discarded as inadequate. A large number of questions concerning both can only be answered by reference to the general principles of public law, which are applicable in the one field as in the other. Questions concerning legal competence of an individual, concerning the extent to which error, fraud or duress invalidate a legal act are examples of the numerous identical questions which arise in both fields and may be answered in both by reference to general principles of public law. These are what the writer calls relationships of identity. A second category is that of relations of subordination—opposed certainly to the logic of the doctrine of the separation of powers but nevertheless existent. That the administration is subordinated in many respects to the courts requires no elucidation. A corresponding subordination of courts to the administration obtains only in a minor degree through the supervision exercised by ministries of justice. A third category of relations between the two branches of government is that of mutual and reciprocal support. Courts require the assistance of administrative officials, administrative officials of courts, in order effectually to perform their respective functions. Finally a fourth group of relations is that of reciprocal control. Each department is bound in certain respects by the acts of the other.

The second essay, entitled "Preliminary Questions of International Law," is written by the well-known authority on the work of the Hague Conferences, Prof. Otfried Nippold of the University of Bern. Should the publicistic science of international law confine itself merely to the recording and interpreting of the developments which are taking place, particularly through the Hague Conferences, or should it actively and constructively participate in this development? Should it propose questions for discussion at the next Hague Conference and point the way to the solution of the problems which engage the attention of ministries of foreign affairs? These are some of the questions discussed. The writer takes a moderate view. The primary function of the science of international law is doubtless still that of registering changes and interpreting them; but it is quite within its province, and indeed incumbent upon it, to assist in the development of international law also. In this connection the writer defines his position with regard to the great

pacifist movement of recent years. He believes that this movement has greatly aided in the actual development of international law. It has been a potent constructive agency in this field. But because of its essentially propagandist character any overt alliance between it and the science of international law ought to be avoided. Moreover, in one respect the writer believes that the pacifist movement is misdirected and liable to thwart and delay real progress. The ideal of a world state, which the pacifists elevate as the goal of all their efforts, is fatuous. Not an elaboration of international political organization, but a development of international law is what is needed. The national state, which is now the unit in a family of nations will not be superseded by any world state.

The third paper is by Prof. Hans von Frisch of the University of Czernowitz on the subject of "The Law of Austrian Citizenship." Springing in first instance from the civil code of 1811 but supplemented by a long line of special ordinances, decrees and patents, and hitherto lacking comprehensive codification, the law of Austrian citizenship is a conglomerate composed of the most diverse norms having their sources in the numerous different forms of government of the last century. The courts and administrative officials have been either unable through their interpretations to introduce any clear solution of existing problems, or the solution reached is inconsistent with the practice of other nations and the theory which should govern the subject. Only a codification will avail to remove the difficulties which attend this subject.

The fourth article, by Dr. Leo Wittmayer of the University of Vienna, is on "The Significance and the Development of the 'Secondary' Legislation in France." The extensive ordinance-issuing power of the French president is what is meant by "secondary legislation." The history of these *règlements d'administration publique* is traced from the revolutionary period. The circumstances under which they may be issued; the method of their enactment, and particularly the rôle which the council of state plays in connection with them; their importance as being materially laws; their significance as constituting exceptions to the principle of the separation of powers; the limitations on their validity, all are phases of the subject fully discussed.

The last article in the first part of the *Jahrbuch* deals with "North American Court Decisions Concerning the Question Whether Foreign States are Subject to the Local Jurisdiction." The author is H. Wittmaack of Leipzig. The leading case of the *Exchange*, decided by Chief Justice Marshall in 1812, is reported at length. The familiar case of the *Variag* (1902) is likewise discussed. Finally the writer reviews the re-

cent decision of the supreme court of Massachusetts in which it was held that certain trustees of the Canadian Intercolonial Railway, in whose hands were placed property of the railway located in Massachusetts, could not be sued since the railway was technically the property of the king of England.

Altogether the *Jahrbuch* maintains in this volume the high standard of excellence for which it is reputed. One wonders why a similar publication in English would not be feasible.

WALTER JAMES SHEPARD.

Die Monroedoktrin in ihren Beziehungen zur amerikanischen Diplomatie und zur Völkerrecht. By DR. JUR. HERBERT KRAUS. (Berlin: J. Guttentag, 1913. Pp. 480.)

It has remained for a German to write the fullest and most systematic treatment of the Monroe Doctrine. There is no book in the English upon this subject which approaches Dr. Kraus's work in completeness or in orderly arrangement. The materials, both source and secondary, have been carefully examined (there seem to be surprisingly few omissions in the excellent bibliography) with a resulting freshness of treatment which an American writer, handicapped by the hackneyed traditions of the subject, might have found difficult to obtain. As one might expect, the work is fully documented and aside from the usual but quite unnecessarily careless proofreading, the extracts from documents in English are faithfully reproduced. An appendix contains the presidential messages having a bearing upon the subject.

The author, whose academic and other connections in the United States were numerous, was led to an investigation of the Monroe Doctrine in considering two problems: the causes of the successful and rapid increase of the political power of the United States, and the essentially different position which this country occupies from all other world-powers. Both questions, we are informed, led him to examine the Monroe Doctrine! While his main interest was the international legal bearing of the doctrine, its historical development fills the greater portion of the book. Dr. Kraus first considers the message of 1823, its authorship, content, and historical setting. This part of the subject has been treated so often that nothing novel in interpretation may be expected. The message was the expression of the fundamental principle of the political isolation of the Americas. This rested upon four antecedent propositions: the doctrines of no-entangling-aliances, neutrality, recog-